



STAFF REPORT ACTION REQUIRED

First Parliament Site – Financial/Property Arrangements with Toronto Parking Authority, Toronto Transit Commission and the City

Date:	April 14, 2011
To:	Government Management Committee
From:	Chief Corporate Officer
Wards:	28 & 30 – Toronto Centre – Rosedale & Toronto - Danforth
Reference Number:	P:\2011\Internal Services\Re\Gm11016re (AFS #13297)

SUMMARY

In order to have the historic site of the first Parliament of Upper Canada at 265 Front Street East placed into public ownership, and as part of a series of related property transactions, Council instructed the TTC to lease the TTC's 70 Parliament St vacant property for use by the car dealership (1255870 Ontario Limited) then in business at 265 Front St. To compensate the TTC, the site of a TPA parking lot would be made available to the TTC and alternative properties would be acquired to compensate the TPA.

This report recommends Council approve the details of the property arrangements and related financial adjustments which have now been determined among the City, the TTC and the TPA and are set out in the recommended Memorandum of Understanding.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. City Council authorize the Memorandum of Understanding between the City, TPA and TTC related to having the first Parliament site being placed into public ownership, substantially on the terms on the attached Appendix "A".

Financial Impact

Approval of the Memorandum of Understanding will result in some additional costs to the City of Toronto. However, at this time, the exact costs to acquire land and/or compensate the TTC and/or the TPA are not known. It is anticipated that funds up to a maximum of \$0.500 million may be required. Funding of up to \$0.500 million is available in the Land Acquisition Reserve Fund for this purpose. Once negotiations are finalized, the 2011 Approved Capital Budget for Real Estate Services will be increased by the additional funding required, funded from the Land Acquisition Reserve, for a net \$0 cost, through the City's quarterly variance report.

DECISION HISTORY

City Council, at its meeting on May 21, 22 and 23, 2003, adopted Motion J(19), directing staff to work in tandem with the Province to develop a comprehensive package of real property transactions to bring the site at 265 Front Street East ("265 Front") into public ownership and to report back to the June 24, 2003 Council meeting.

[http://www.toronto.ca/legdocs/2003/agendas/council/cc030521/nomj\(19\).pdf](http://www.toronto.ca/legdocs/2003/agendas/council/cc030521/nomj(19).pdf)

At its meeting on June 24, 25 and 26, 2003, City Council adopted Motion J(53), adopting the confidential report from the Commissioner of Economic Development, Culture and Tourism, directing staff to negotiate with the owner of 265 Front and with its tenant in order to bring the site into public ownership.

[http://www.toronto.ca/legdocs/2003/agendas/council/cc030624/nomj\(53\).pdf](http://www.toronto.ca/legdocs/2003/agendas/council/cc030624/nomj(53).pdf)

City Council, at its meeting on September 22, 23, 24 and 25, 2003, adopted Clause No. 45 of Report No. 9 of the Policy and Finance Committee, authorizing an overall transaction to secure 265 Front.

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030922/pof9rpt/cl045.pdf>

By its adoption of the recommendations contained in Clause No. 47 of Report No. 2 of the Policy and Finance Committee, City Council, at its meeting on March 1, 2 and 3, 2004 revised the terms of part of the transaction to bring 265 Front into public ownership. Council also directed staff to report back on the process to address the various requirements of the TTC and the TPA.

<http://www.toronto.ca/legdocs/2004/agendas/council/cc040301/pof2rpt/cl047.pdf>

City Council, at its meeting on November 30, December 1, 2, 4 and 7, 2009, adopted the recommendations contained in Government Management Committee Item GM26.35, which among other matters authorized the TPA to purchase the properties municipally known as 134 and 136 Broadview Avenue.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.GM26.35>

At its meeting on August 25, 26 and 27, 2010, City Council adopted the recommendations, as amended, contained in Government Management Committee Item GM33.21, which, among other matters, authorized that \$250,000 from the fair market value of 465 Huron Street, be credited to TPA to compensate for its costs to construct replacement parking that will be lost at 111 Broadview Avenue upon relocation of the TTC to that site.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.GM33.21>

The Toronto Commission, at its meeting on April 6, 2011, approved the terms of the Memorandum of Understanding.

http://www3.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2011/April_6_2011/Reports/PARLIAMENT_LOOP_LAND.pdf

ISSUE BACKGROUND

The first Parliament buildings of the Province of Ontario (then Upper Canada), were constructed in 1796 on property which included 265 Front St. East (the “First Parliament Site”). The owner of 265 Front St. East, 1255870 Ontario Limited ("1255870") intended to develop this property as a Porsche auto dealership. It also intended to develop an Infiniti auto dealership at 64 Parliament Street. In June 2003, Council directed staff to negotiate with 1255870 to bring the historic First Parliament Site into public ownership.

Staff successfully negotiated an approach which would bring 265 Front St. East into public ownership. This approach included participation by the Province and involved properties held by the TTC and TPA. In September 2003, Council approved the overall property transactions as follows:

1. 1255870 would sell the historic 265 Front property to the Province (Ontario Heritage Trust).
2. In exchange for 265 Front, the Province would sell a portion of its 45 Eastern Avenue property to 1255870.
3. The Infiniti auto dealership originally intended by 1255870 for 64 Parliament Street would be relocated to the portion of 45 Eastern Avenue being acquired by 1255870, freeing up 64 Parliament Street to become part of the site for the Porsche dealership originally intended for 265 Front St. East.
4. The TTC/City would lease the 70 Parliament Street property which is adjacent to 64 Parliament Street to 1255870 and the combined site at 64-70 Parliament Street would be used for the relocated Porsche dealership.
5. The City would purchase 70 Parliament Street from the TTC and assume the lease, in compensation for which the City would transfer a portion of the TPA’s 111 Broadview Avenue parking lot to the TTC.

6. The TTC would be relocated to a portion of the property at 111 Broadview Avenue, subject to the TPA's loss of parking spaces being made up on another site in the Queen Broadview BIA, the cost to the TPA not to exceed market value of the replacement lands less the market value of 111 Broadview Avenue before the installation of the loop, with every effort being made to replace the spaces prior to the installation of the loop; and if the lost spaces had not been replaced, a report be submitted to Council prior to implementation.
7. Over a period of time, the City will also pay the TTC, from the lease revenue, the amount by which the fair market value of 70 Parliament Street exceeds the fair market value of the lands the TTC will occupy at 111 Broadview Avenue.

Subsequently, in March 2004, Council revised the terms of the lease of 70 Parliament to include a lease incentive. Council further requested staff report to it on the process to address the various property requirements of the TTC and the TPA.

COMMENTS

The historic site of the first Parliament has, as intended, been acquired by the Ontario Heritage Trust and the TTC's lease of its 70 Parliament Street to 1255870 has been prepared and executed. The TPA completed a review of the impact of the proposed TTC loop on its 111 Broadview property and determined that as configured the loop would result in a loss of approximately 39 parking spaces. An initial MOU between the TTC, TPA and the City to address their various requirements was prepared in 2003 but all the terms and conditions were not finalized. Accordingly, the report back to Council on the various requirements of the TPA and the TTC to implement the arrangements was not submitted.

In the interim, there have been developments which affected the terms of the MOU. At its December 2009 meeting, City Council authorized the TPA to acquire 134 and 136 Broadview Avenue to replace approximately 25 parking spaces that will be lost once the TTC occupies a portion of 111 Broadview. A replacement property for approximately 14 more TPA parking spaces is still required, to be acquired preferably prior to the portion of 111 Broadview being turned over to the TTC. In addition, at its August 2010 meeting, Council authorized that the TPA's costs of constructing all 39 replacement parking places, approximately \$250,000.00, be credited to TPA from the fair market value of the transfer of operational management of 465 Huron Street to TPA.

All the terms of the MOU have now been determined and are recommended for approval, substantially in the form attached as Appendix A. The MOU follows the recommendations in reports previously approved by Council and primarily provides details on implementing those recommendations. The main matters settled in the MOU not previously addressed in prior reports to Council include:

1. The possibility that the TTC might use its portion of the site at 111 Broadview Avenue in such a manner that the TPA could no longer operate efficiently on the

remainder of the lands. In this case, the TPA would relocate all its spaces and either the City or the TTC would take responsibility for the balance of the 111 Broadview lands. The TPA would be entitled to be compensated for the larger area of land and number of parking spaces affected accordingly;

2. The possibility that the TTC might choose to develop the transit loop at an alternate location, including perhaps the location at 134 and 136 Broadview acquired for the TPA pursuant to a prior report;
3. The timing to set the relocations into motion;
4. Details regarding appraisal of the properties being reassigned among the parties to determine the basis for the compensation contemplated in the reports, and any payments arising therefrom;
5. Details regarding how the City will make payments to the TTC after transferring title of 70 Front Street to the City, due to (previously authorized) adjustments pertaining to the lease payments.

The TPA Board has approved the terms. The TTC had approved the initial MOU in 2003. However, as the MOU in Appendix A includes revision since its initial approval, TTC's staff secured approval for these revisions from the Toronto Transit Commission at its April 6, 2011 meeting. City Council approval is necessary to finalize the MOU among TTC, TPA and the City.

CONTACT

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SIGNATURE

Bruce Bowes, P.Eng.
Chief Corporate Officer

ATTACHMENTS

Appendix "A" - Terms and Conditions of Memorandum of Understanding
Attachment 1 – Site Map
Attachment 2 – Location of Reference Properties

Appendix “A”

Memorandum of Understanding

As directed and authorized by Council to facilitate the sale of the historic site of the First Parliament at 265 Front St. E. to the Ontario Heritage Trust, the TTC has leased, for a twenty year term, its 70 Parliament St property to 1255870 Ontario Inc. in order that the dealership Downtown Fine Cars Inc. may be re-located from the historic site. The TTC's Lease to the 1255870 was carried out on terms approved by Council and by the Commission, including lease incentives towards re-location costs and towards environmental related clean-up costs. The annual net rental payable by the Tenant is \$240,000.00 (+ GST – now HST), indexed by CPI every five years.

To replace 70 Parliament Street ("70 Parliament") the following property transfers, a property acquisition and related financial adjustments among the City, the TTC and the TPA are authorized:

1. Basic Premise

The City shall:

- (a) transfer the operational management of a portion of the TPA's 111 Broadview Avenue property presently operating as Carpark No 45 (“the TPA Property”) to the TTC; or
- (b) acquire and transfer the operational management of an alternate property to the TTC.

2. 111 Broadview – the TPA Property

- (a) If the TTC decides to replace 70 Parliament by accepting a portion of the TPA Property, the TTC will determine the portion it needs of the TPA Property based on its design for its future transit facilities. The remainder of the TPA Property shall continue to be operated by the TPA according to the TPA's standards, subject to the paramountcy of transit operations.
- (b) Where the portion of the TPA Property not required for TTC purposes cannot be operated as a carpark by the TPA at its standards, the TPA has the right to transfer the operational management of the entire TPA Property to the City or to the TTC and to have the parking spaces of the whole property replaced in accordance with the terms outlined in this memorandum.

- (c) The City shall transfer the operational management of the TTC's portion to the TTC for transit purposes together with such rights as are mutually agreed to be necessary to permit integration of the operation of the transit facilities and the remaining TPA parking lot within the TPA Property. The TTC shall not operate a parking lot on its portion without the consent of the TPA.

3. Alternate and/or Substitute Property

- (a) It is estimated that at least 39 TPA parking spaces will need to be replaced by the City for the TPA, however the exact number is subject to change, based on the final design of the transit facilities. TPA has acquired the substitute properties at 134 and 136 Broadview Avenue (the "Substitute Property") to replace approximately 25 parking spaces. As authorized by City Council, at its meeting held on November 30, December 1, 2, 4 and 7, 2009, with the adoption of the recommendations contained in Government Management Report No. GM26.35, the City has compensated TPA for its purchase of the Substitute Property.
- (b) The City shall replace the remaining 14 spaces with additional property within the Queen Broadview BIA (the "Additional Property"). The Additional Property shall be acquired by the City/TPA by negotiation or, if necessary, by expropriation. The cost of the Additional Property will be borne by the City.
- (c) The TTC may decide to replace 70 Parliament by accepting transfer of the operational management of the Substitute Property and/or the Additional Property for its future transit facilities. The TTC will construct its facilities on the Substitute Property and/or the Additional Property instead of on a portion of the TPA Property.

4. Timing

- (a) The City's transfer of the operational management to the TTC of the said portion of the TPA Property will take place when the TTC notifies the TPA and the City that the TTC has finalized its design for the transit loop and determined how much of the TPA Property is required for transit loop purposes and is ready to commence construction.
- (b) At the same time the City transfers to the TTC the operational management of the TTC portion of the TPA Property, the Substitute Property and/or Additional Property, as the case may be, the TTC will transfer title of 70 Parliament Street to the City.
- (c) It is understood and agreed that every effort will be made to replace the parking spaces lost by the TPA prior to the installation of the transit loop, and if the lost spaces have not been replaced, the Director of Real Estate will submit a report to City Council through the appropriate standing committee prior to operational management of the TTC portion of the TPA Property being turned over to the TTC.

5. Financial Arrangements – General

- (a) The fair market value ("FMV") of the Substitute Property, the Additional Properties and the portion of the TPA Property for which the operational management has been transferred to the TTC shall be appraised by an independent appraiser and shall be based on the highest and best use at the time the properties are acquired. Other terms of reference for the appraisal shall be mutually agreed upon by the City, the TTC and the TPA.
- (b) The cost of the appraisals shall be paid by the City.
- (c) The FMV of the two portions of the TPA Property will be allocated on a pro-rata basis based on area, i.e. the TTC parcel value and the TPA parcel value. For example (based on artificial numbers):

Total area of 111 Broadview Ave property	= 25,000 S.F.
Assume area of TTC parcel	= 15,000 S.F.
Appraised FMV entire 111 Broadview site	= \$1,000,000

TTC parcel value = $15,000 / 25,000 \times \$1,000,000$	= \$600,000
TPA parcel value = $10,000 / 25,000 \times \$1,000,000$	= \$400,000

6. Financial Arrangements between the City and the TPA

- (a) If the FMV of the Substitute Property and the Additional Properties exceeds the FMV of the portion of TPA Property being transferred to the TTC, the TPA will compensate the City for the differential.
- (b) If the FMV of the Substitute Property and the Additional Properties is less than the FMV of the TTC's portion of TPA's Property being transferred to the TTC, the City will compensate the TPA for this differential.
- (c) City Council, at its meeting on August 25, 26 and 27, 2010, adopted the recommendations, as amended, contained in Government Management Report No. GM33.21, which, among other matters, authorized that \$250,000 from the FMV of the transfer of operational management of 465 Huron Street, be credited to TPA to compensate for its costs to construct the 39 replacement parking spaces. Therefore, the City has compensated the TPA for the cost to construct the 39 replacement parking spaces.

7. Financial Arrangements between the City and the TTC

- (a) The TTC shall receive and retain the Tenant's Basic Rent which rent shall be applied by the TTC to the differential owed by the City to the TTC until the earlier of: the date the differential is paid in full to the TTC; or, the date the title of 70 Parliament is transferred to the City.
- (b) When the differential owing by the City to the TTC has been paid in full by means of the Basic Rent while the TTC has title of 70 Parliament, the TTC shall forward all subsequent Basic Rent in monthly installments to the City.
- (c) If the FMV of the Substitute Property and/or the Additional Properties are less than the FMV of 70 Parliament, the differential, being the amount by which the FMV of 70 Parliament is greater than the FMV of the Substitute and/or the Additional Properties or greater than the FMV of the TTC portion of the TPA Property, shall be paid by the City to the TTC.
- (d) In addition to FMV, calculation of the differential will be based on the following considerations:
 - (i) The TTC's Lease of 70 Parliament to 1255870 provides that the TTC shall bear up to a maximum of \$500,000 of the Tenant's environmental compensation costs to remove contaminated fill in excess of the costs to remove clean fill. The Basic Rent credited to the City, as payments of the differential owed by the City to the TTC, shall include Basic Rent paid by the Tenant to the TTC and shall not be reduced by the amount of the Environmental Costs Compensation which the Tenant is allowed by the Lease to deduct from its Basic Rent payable to the TTC.
 - (ii) Where, after the transfer of title of 70 Parliament to the City, the Tenant has environmental compensation costs within the \$500,000 limit not yet deducted by the Tenant from the Basic Rent, such amount still deductible by the Tenant from the Basic Rent due the City shall be treated as a credit against the balance of the differential owed by the City to the TTC and shall be deducted from the balance of the differential.
- (e) Basic Rent received by TTC from the Tenant while the TTC was owner and landlord shall be totaled. That amount of rent shall be deducted from the differential in the FMV of the 70 Parliament Loop and the FMV of TTC's portion of the TPA Property or the Substitute Property. The balance of the differential shall be paid by the City to the TTC as if it were the principal of a loan from the TTC to the City amortized over the balance of the Lease term with interest at the prime rate as of the date of the transfer of title of 70 Parliament to the City. The City shall pay such amortized annual amount in advance to the TTC each year after 70 Parliament is transferred to the City.

- (f) The Lease of 70 Parliament also entitles the Tenant each year during the 20 year Lease term to deduct from the Basic Rent an annual amount of \$38,438.00 as the lease incentive in respect of the Tenant's relocation costs. As these relocation costs are the City's obligation, after title of 70 Parliament is transferred by the TTC to the City, the City shall, during the remaining term of the Lease, pay to the TTC the amount of the relocation lease incentive deducted by the Tenant from its Basic Rent due the TTC while the TTC was the owner of the property, as follows:

The total of the relocation lease incentive deducted by the Tenant from its Basic Rent due the TTC shall be calculated for each year and portion of a year the TTC was the landlord. This deducted amount shall be paid by the City to the TTC as if it were a loan made by the TTC to the City to be paid back by the City over a long term amortization period, but without interest. The total of such re-location lease incentive deducted by the Tenant shall be amortized in an equal annual payment amount for each year of the remaining term of the Lease after the year title of 70 Parliament is transferred by the TTC to the City. Such annual amount shall be paid annually, in advance, by the City to the TTC.